

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VANDA PHARMACEUTICALS INC.,

Plaintiff,

v.

TEVA PHARMACEUTICALS USA, INC.,

Defendant.

C.A. No. 23-152-CFC

VANDA PHARMACEUTICALS INC.,

Plaintiff,

v.

APOTEX INC. and APOTEX CORP.,

Defendant.

C.A. No. 23-153-CFC

**PLAINTIFF’S MOTION TO STRIKE AFFIRMATIVE DEFENSES AND
TO DISMISS COUNTERCLAIMS PREMISED ON THE
JANUARY 2021 SCHEDULING CONFERENCE**

Plaintiff Vanda Pharmaceuticals Inc. respectfully moves pursuant to Federal Rule of Civil Procedure 12(f) to strike Defendants’ affirmative defenses and pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Defendants’ counterclaims premised on the January 2021 scheduling conference. Specifically, Vanda moves to strike:

- Apotex’s affirmative defense of estoppel (Aff. Def. 5) and its affirmative defense of invalidity to the extent that “judicially-created bases for invalidation” is intended to include the January 8, 2021 scheduling

conference (Aff. Def. 2);

- Teva’s affirmative defenses of equitable estoppel, judicial estoppel, and implied license (Aff. Def. 3), patent misuse (Aff. Def. 4), unclean hands (Aff. Def. 5), “oath trifling” (Aff. Def. 6), and invalidity to the extent that “judicially created bases for invalidation” is intended to include the January 8, 2021 scheduling conference (Aff. Def. 2).

And Vanda moves to dismiss:

- Apotex’s counterclaim of invalidity to the extent that “judicially-created bases for invalidation” is intended to include the January 8, 2021 scheduling conference (Counterclaim II);
- Teva’s counterclaims of equitable estoppel, judicial estoppel, or implied license (Counterclaim II); patent misuse (Counterclaim IV); unclean hands (Counterclaim V); “oath trifling” (Counterclaim VI); and invalidity to the extent that “judicially created basis for invalidation” is intended to include the January 8, 2021 scheduling conference (Counterclaim I).

The grounds for this motion are set forth in the accompanying opening brief and supporting documents filed contemporaneously herewith.

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/s/ Daniel M. Silver

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